

Remarks

This Amendment on Appeal is in response to the Advisory Action dated **January 19, 2011**. This Amendment on Appeal makes a non-substantive amendment to claim 45 to correct an antecedent issue, which places claim 45 in better form for consideration on appeal. This Amendment on Appeal is being filed prior to an Appeal Brief.

The Final Office Action mailed September 27, 2010 rejected claim 45 under 35 USC § 102 and under 35 USC § 112, second paragraph. The Final Office Action also rejected the other pending claims – those rejections will be addressed in a subsequent Appeal Brief.

Status of Claim 45

The current status of claim 45 is unclear. The Final Office Action rejected claim 45 as anticipated under 35 USC § 102, and also rejected the claim as indefinite under 35 USC § 112, second paragraph, citing an antecedent issue – the term ‘circumferential connecting struts’ did not have an antecedent.

Applicants submitted an Amendment After Final on November 24, 2010, which made a non-substantive amendment to claim 45 to correct the antecedent issue, in an attempt to render moot the indefiniteness rejection under 35 USC § 112. With respect to the rejection under 35 USC § 102, the Amendment After Final presented arguments that claim 45 was not anticipated – the non-anticipation arguments would apply to both the amended and non-amended versions of claim 45.

In response to the Amendment After Final, the Examiner issued an Advisory Action on December 9, 2010, which indicated that claim 45 was allowed; however, the Advisory Action did not indicate whether the Amendment After Final had been entered.

The Examiner then issued a second Advisory Action, dated January 19, 2011, which indicated that the rejection of claim 45 had been overcome (see check box 5), but also indicated that claim 45 was rejected (see check box 7).

The second Advisory Action indicated that the Amendment After Final would not be entered because the amendment to claim 45 would require further consideration. This reasoning appears to be pretextual because the amendment was non-substantive, and because the second Advisory Action also appears to indicate that claim 45 could be rejected over the

references applied against the other rejected claims. If claim 45 would be subject to a rejection over the cited references, then no additional search/consideration is necessary to form the rejection.

The current status of claim 45 remains unclear.

Non-Substantive Amendment to Claim 45

An antecedent issue still exists in claim 45, which will be corrected by entry of this Amendment on Appeal. The amendment deletes the term “circumferential” from the phrase “circumferential connecting struts.” The remaining term “connecting struts” has proper antecedent support.

The amendment to claim 45 is non-substantive and is not intended to change the scope of the claim. The Examiner has not given any reason why consideration of the corrected version of claim 45 would require Applicants to file an RCE. The amendment will moot the rejection under 35 USC § 112, second paragraph, and will also present claim 45 in better form for consideration on appeal.

Applicants request entry of this Amendment on Appeal.

Respectfully submitted,

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